IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.MC.No. 2936 of 2007()

CC.1537/2005 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

SURESH DAMODARAN, S/O.DAMODARAN,
AGED 34 YEARS, SRIJYOTHI, SHIVAJI NAGAR,
KANNAKI ROAD, MOOTHANTHARA, PALAKKAD - 14.

BY ADV. SRI.BINOY VASUDEVAN

RESPONDENTS: COMPLAINANT/STATE

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1. ICICI BANK LTD, TELMA COMPLEX, ROUND
SOUTH REPRESENTED BY THE POWER OF ATTORNEY
HOLDER MOOSAKUTTY V.M.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2936 Of 2007

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Dated this the 20th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instrument Act. The petitioner has not received any summons. He came to know that a non bailable warrant of arrest is pending against him. The petitioner has rushed to this Court with a prayer that the proceedings against him may be quashed.

2. What is the reason? The learned counsel for the petitioner contends that after the receipt of the notice of demand, the cheque amount has been paid and the liability has been discharged. In these circumstances, the continuation of the proceedings is unjustified and must be brought to an end by invoking the jurisdiction under Sec.482 Cr.P.C.

3. I have heard the learned counsel for the petitioner in detail. There is no specific assertion that in response to the notice of demand received, the petitioner had sent the amount due under the cheque to the complainant informing the complainant that he was making payment as demanded in the notice of demand. The petitioner has relied on some other payments made by him, on account of default of four EMIs, which was due from the petitioner to the complainant by a

lump sum payment of Rs.50,000/-. I find no merit at this stage on the contention raised by the petitioner that the said payment of Rs.50,000/- was made as demanded by the complainant in the notice of demand. It is certainly for the petitioner to appear before the learned Magistrate and raise and establish such a contention.

4. The learned counsel for the petitioner submits that a warrant of arrest is issued against the petitioner. The petitioner is willing to surrender before the learned Magistrate ; but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that a direction may be issued under Section 482 Cr.P.C to the learned Magistrate to release him on bail when he appears and applies for bail.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate must consider such application for bail on merits, in accordance with law and expeditiously. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be

necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE